

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PATRICIA O'ROURKE,)

Plaintiff,)

v.)

C.A. No. N20C-08-064 JRJ

PNC BANK, Match Group, Inc.,)

Leaf of Life Covenant Ministry, Inc.,)

Haija Lampo, Lawanda Williams,)

Eurostar Luxury Motors, Alvanndy)

Ventures and John Doe,)

Defendants.)

Submitted: December 17, 2021

Decided: February 15, 2022

MEMORANDUM OPINION

Upon PNC Bank's Motion to Dismiss the First Amended Complaint: **GRANTED.**

Robert D. Goldberg, Esquire, Biggs and Battaglia, 921 N. Orange St., Wilmington, DE 19801, Attorney for Plaintiff.

Brittany M. Giusini, Esquire, Ballard Spahr, LLP, 919 N. Market St., 11th Floor, Wilmington, DE 19801-3034, Attorney for Defendant.

Jurden, P.J.

I. INTRODUCTION

Before the Court is Defendant PNC Bank's ("PNC") Motion to Dismiss Plaintiff's First Amended Complaint for failure to state a claim of negligence against PNC.¹ Because Plaintiff O'Rourke has failed to plead a cognizable legal duty owed to her by PNC under the facts set forth in the First Amended Complaint, the motion is **GRANTED**.

II. PROCEDURAL HISTORY

In her initial Complaint filed on August 10, 2020, O'Rourke alleged PNC violated "the Banking Law and Regulations," specifically, the "Bank Secrecy Act" ("BSA").² PNC responded by filing a Motion to Dismiss the Complaint, arguing that the BSA does not provide a private right of action for plaintiffs.³ In response, O'Rourke then filed her First Amended Complaint on October 7, 2021.⁴ The only difference between the Complaint and the First Amended Complaint is an alteration

¹ Defendant PNC's Motion to Dismiss the First Amended Complaint ("Def. Mot.") (Trans. ID. 67032593). The only count against PNC in the First Amended Complaint is Count II – Negligence.

² Complaint at ¶¶ 33-39 (Trans. ID. 65824027). The official name of the "Bank Secrecy Act" is the Currency and Foreign Transactions Reporting Act of 1970. *See* 31 U.S.C. § 5311, et. seq..

³ Defendant PNC Bank's Motion to Dismiss the Complaint, at 1 (Trans. ID. 66888081).

⁴ First Amended Complaint ("Am. Compl.") at ¶¶ 12, 24 (Trans. ID. 66996090). Upon the filing of O'Rourke's First Amended Complaint the Court deemed PNC's Motion to Dismiss the initial Complaint moot. *See* Order 10/14/2021 (Trans. ID. 67014488).

to Count II (the only count in which PNC is implicated). O'Rourke substituted a negligence claim for the failed BSA claim.⁵ PNC promptly moved to dismiss.⁶

III. FACTS⁷

In early 2018, Plaintiff Patricia O'Rourke was a recently divorced 64-year-old who had banked with PNC for many years.⁸ In 2018, she enrolled with the online dating service, "Plenty of Fish," where she began to cultivate a virtual relationship with an individual identifying himself as "William Riccardo" ("Riccardo"). Riccardo represented to O'Rourke that he was a doctor in the military stationed in Afghanistan and would be returning to the United States for good following the end of his mission.⁹ After gaining O'Rourke's trust, Riccardo told her that he acquired five million dollars' worth of "gifts" while in Afghanistan but was experiencing issues facilitating their transfer to the U.S. because of the sudden death of the lawyer who handled all of his financial interests.¹⁰ It was at this point that Riccardo began

⁵ Am. Compl., Exhibit A.

⁶ See generally Def. Mot.

⁷ Defendant accepts the factual background set forth in the Amended Complaint solely for the purposes of this Motion. Def. Mot. at 2 n.1. For the purposes of a Motion to Dismiss, the Court accepts all well pleaded factual allegations as true, accepts even vague allegations as "well pleaded" if they give the opposing party notice of the claim, and draw all reasonable inferences in favor of the non-moving party. *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002)).

⁸ Am. Compl. at ¶¶ 12, 24. PNC "had a long, established relationship" with O'Rourke and "was aware of Plaintiff's banking history and practices." *Id.* at ¶¶ 34, 35.

⁹ *Id.* at ¶¶ 14, 15.

¹⁰ *Id.* at ¶ 16.

soliciting monetary transfers from O'Rourke under the guise of eventually freeing up the alleged five million dollars of "gifts." O'Rourke trusted him and agreed to help.¹¹ Soon thereafter, she received one request after another from Riccardo for funds needed to transfer the package.¹² At Riccardo's request and direction, O'Rourke paid various persons and companies; these payments totaled \$246,600.¹³ Of that sum, \$75,000 was transferred through Defendant PNC Bank.¹⁴

O'Rourke alleges that she attempted on three separate occasions to wire funds from her PNC account, but each time PNC suspected she was "being abused by someone committing a fraud upon her" and declined to wire the funds.¹⁵ Following these refusals, however, PNC allowed O'Rourke to draw a cashier's check in the same amount she had sought to wire on those previous occasions.¹⁶ It is the drawing of the cashier's check that forms the basis of O'Rourke's negligence claim against PNC. O'Rourke alleges that PNC's refusals to wire funds from her account demonstrates PNC knew that she was being defrauded and had a duty to investigate and warn her.¹⁷

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at ¶ 17.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 24.

¹⁶ *Id.*

¹⁷ Am. Compl. at ¶¶ 11, 13, 24, 35, 38, 39.

IV. PARTIES' CONTENTIONS

O'Rourke alleges that PNC "provides a government related service to individuals and at all times it owes to those individuals it serves *a duty of reasonable care*,"¹⁸ which includes the obligation to take reasonable care when making payments from her account.¹⁹ O'Rourke further alleges that as a result of PNC's knowledge of her banking history, practices, and its awareness of the types of fraud persons such as O' Rourke are subjected to, once PNC acquired a reasonable suspicion that her requested wire transfers were for a fraudulent purpose, PNC owed her a duty to protect her from the malicious third party, which it failed to do.²⁰ Specifically, O'Rourke states that her negligence claim is premised on "the legal principle that when a party knows another is being abused, it cannot stand idly by and allow the abuse to occur and it certainly cannot aid the abuser, as PNC did here, by facilitating the withdrawal of her funds."²¹ O'Rourke does not cite to any authority in support of this purported "legal principle." O'Rourke also alleges that, as a regulated banking entity, PNC has a duty to "follow Federal mandates designed to protect its depositors from the type of exploitation suffered by O'Rourke."²²

¹⁸ *Id.* at ¶ 34 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.* at ¶ 39.

²¹ Plaintiff's Opposition to Defendant PNC Bank's Motion to Dismiss Her First Amended Complaint ("Pl. Resp.") at 5 (Trans. ID. 67132762).

²² Compl. at ¶ 36.

PNC argues that the negligence claim is nothing more than an attempt to recast O’Rourke’s abandoned BSA claim.²³ As such, it fails to state a claim because the BSA does not establish a standard of care.²⁴ PNC maintains that O’Rourke fails to cite any cases which support the proposition that a bank can be held liable in negligence where the customer has fallen victim to a scam.²⁵ PNC further argues that, under Delaware law, a bank’s duty of care is preempted by the Uniform Commercial Code (“UCC”). And, even if the UCC did not preempt a common law negligence claim, the duty owed by PNC to O’Rourke is defined by O’Rourke’s customer agreement.²⁶ PNC contends that the customer agreement imposes no “duty to warn” on PNC; it expressly permits O’Rourke to freely withdraw her funds, and states that it is O’Rourke’s “duty and responsibility to maintain [her] account. . .”.²⁷

V. STANDARD OF REVIEW

In deciding a motion to dismiss under Rule 12(b)(6), the Court shall accept all well-pleaded allegations as true and make all reasonable inferences in favor of the

²³ Def. Mot. at 4.

²⁴ *Id.* (citing *Venture Gen. Agency, LLC v. Wells Fargo Bank, N.A.*, 2019 WL 3503109, at *7 (N.D. Cal. Aug. 1, 2019); *see also Reg’l Produce Coop. Corp. v. TD Bank, N.A.*, No. 19-cv-1883, 2020 WL 1444888, at *11 (E.D. Pa. Mar. 24, 2020)).

²⁵ Defendant PNC Bank’s Reply in Further Support of its Motion to Dismiss the First Amended Complaint (“Def. Reply”) at 1 (Trans. ID. 67158047).

²⁶ *Id.*

²⁷ *Id.* at 3.

non-moving party.²⁸ Factual allegations, even if vague, are well-pleaded if they provide notice of the claim to the other party.²⁹ However, the Court need not “accept conclusory allegations unsupported by specific facts, nor . . . draw unreasonable inferences in the plaintiff’s favor.”³⁰ The Court should deny the motion if the claimant “may recover under any reasonably conceivable set of circumstances susceptible of proof.”³¹

VI. DISCUSSION

The issue before the Court is whether PNC owed O’Rourke a duty to investigate and thwart a “romance scheme” to which she fell victim. Barred from asserting her original BSA claim, O’Rourke has now recast her claim as a common law negligence claim. The elements of a common law negligence claim are duty, breach, causation, and harm.³² If any one of these elements is missing, the claim cannot succeed.

O’Rourke has not and cannot, based on the law, establish that PNC owed her a duty to stop her from drawing money from her account. O’Rourke makes numerous, uncited references to general duties (i.e. the “duty to warn” and “the legal

²⁸ *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998); *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

²⁹ *Spence*, 396 A.2d at 968.

³⁰ *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009).

³¹ *Spence*, 396 A.2d at 968.

³² *Hudson v. Old Guard Ins. Co.*, 3 A.3d 246, 250 (Del. 2010).

principle that when a party knows another is being abused, it cannot stand idly by and allow the abuse to occur”), but fails to assert a cognizable legal duty applicable to PNC under these facts.³³ While O’Rourke tries mightily to save her claim, she cannot. As pled, PNC’s purported liability to her is still based upon the BSA, and PNC’s alleged failure to file a Suspicious Activity Report.³⁴ In the absence of viable allegations of an applicable duty of care, O’Rourke’s negligence claim against PNC cannot survive.

VII. CONCLUSION

For the foregoing reasons, PNC Bank’s Motion to Dismiss Plaintiff O’Rourke’s Amended Complaint is **GRANTED**.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

Original to Prothonotary

³³ Am. Compl. at ¶ 39.

³⁴ Def. Mot. at 5-6 (citing Am. Compl. at ¶¶ 34, 36-39; *Lusk v. Kellogg*, 2011 WL 13225140, at *5-6 (C.D. Cal. Aug. 10, 2011) (dismissing claim with prejudice where plaintiff argued he was “not asserting” an “action under the Bank Secrecy Act, but . . . using ongoing violations of federal law as evidence of negligence”)).